



January 31, 2002

Mr. Ricardo Gonzalez  
City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540-1079

OR2002-0466

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157994.

The City of Edinburg (the "city") received a request for any letters or correspondence in regard to a former city employee. You state that you have released most of the information responsive to the request. However, you claim that one memorandum dated November 16, 2001, and some marked information are excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the former employee's address in the submitted information must be withheld pursuant to section 552.024. In actuality, it is section 552.117 of the Government Code that excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city must withhold the home address, home telephone number, social security number, and family member information only to the extent that the respective employee elected to keep this information confidential prior to the city's receipt of the current records request. You state that the employee who is identified in the responsive documents has submitted a written request to the city that his address and social security number not be released to the public. Assuming that this request was submitted to the city *prior* to the city's receipt of the current records request, we agree that you must withhold the address and social security number that you have marked.

If there was no such request submitted to the city prior to the receipt of the current records request, we note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments

to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the city should ensure that the number was not obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the November 16, 2001, memorandum relates to a pending criminal investigation. However, you have failed to explain whether a law enforcement agency or prosecutor is conducting the criminal investigation, and we cannot determine how and why the release of this memorandum would interfere with law enforcement. Thus, we conclude that section 552.108 of the Government Code is not applicable to the memorandum in question, and it must be released to the requestor.

In summary, the city must withhold the marked home address and social security number of the former city employee only to the extent that the respective employee elected to keep this information confidential prior to the city’s receipt of the current records request pursuant to section 552.117 of the Government Code. If the former city employee did not elect to keep this information confidential prior to the city’s receipt of the current records request, the social security number may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I). Furthermore, the November 16, 2001, memorandum is not excepted under section 552.108 of the Government Code, and the city must release it.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 157994

Enc: Submitted documents

c: Mr. Tony Petrovics  
Brush County Claims  
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(w/o enclosures)